

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DELAWARE, LACKAWAXEN and
STOURBRIDGE RAILROAD
COMPANY, et al.,

Plaintiffs,

v.

STAR TRAK, INC.,

Defendant.

CIVIL ACTION NO. 3:18-CV-0480

(SAPORITO, M.J.)

ORDER

AND NOW, this 25th day of October, 2018, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED THAT:**

1. The defendant's motion to dismiss (Doc. 23) is **GRANTED in part and DENIED in part;**

2. The plaintiffs' contract claim for breach of an implied warranty of fitness for an intended purpose is **DISMISSED** for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

3. The plaintiffs are granted leave to file a second amended complaint **within 14 days** after the date of this Order to address any pleading deficiencies with respect to the dismissed claim; and

4. The remainder of the plaintiffs' contract claim—alleging the breach of an implied warranty of workmanlike performance, an implied warranty of merchantability and fitness for ordinary purposes, and an express term that the defendant would “properly” repair, restore, and refurbish Car #97—shall be permitted to proceed.

s/ Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge